

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

K.O. and E.O., Jr., by and through their)
parents and next friends, E.O. and L.J.; and C.J.,)
by and through his father and next friend F.C.;)
each individually and on behalf of)
all others similarly situated,)

Plaintiffs,)

v.)

C.A. No. 18-40149-TSH

JEFFERSON BEAUREGARD SESSIONS III,)
Attorney General of the United States; KIRSTJEN)
NIELSEN, Secretary of the United States Department)
of Homeland Security (DHS); JOHN F. KELLY,)
White House Chief of Staff; STEPHEN MILLER,)
Senior Advisor to the President; GENE HAMILTON,)
Counselor to the Attorney General Sessions;)
THOMAS HOMAN, former Director of United States)
Immigration and Customs Enforcement (ICE);)
RONALD D. VITIELLO, Acting Director of ICE; L.)
FRANCIS CISSNA, Director of United States)
Citizenship and Immigration Services (USCIS);)
KEVIN K. MCALEENAN, Commissioner of United)
States Customs and Border Protection (CBP); ALEX)
AZAR, Secretary of the United States Department of)
Health and Human Services (HHS); SCOTT LLOYD,)
Director of the United States Office of Refugee)
Resettlement (ORR); JOHN DOE ICE AGENTS;)
JOHN DOE CBP AGENTS; and JOHN DOE ORR)
PERSONNEL,)

Defendants.)

JOINT MOTION TO SET BRIEFING SCHEDULE
AND CONSOLIDATE AND EXTEND DEADLINES

Pursuant to Federal Rules of Civil Procedure 4, 6, and 12, and Local Rule 7.1, the parties
in this action jointly seek entry of a consolidated briefing schedule for Defendants' anticipated

initial motion to dismiss the Complaint.¹ *See* FED. R. CIV. P. 4, 6, 12; L.R. 7.1. In particular, Plaintiffs and Defendants respectfully request that the Court: (1) set a single consolidated deadline for all eleven Defendants in this case to file their anticipated motion to dismiss the Complaint; (2) set a single consolidated deadline for Plaintiffs to file their opposition to the motion; and (3) permit the Defendants to file a reply and set a single consolidated deadline for the reply. The reasons for this motion are set forth in the incorporated supporting statement of law and authorities:

1. Plaintiffs filed this action on September 5, 2018, asserting, among other things, claims for money damages against eleven federal employees in their individual capacities, including White House and Cabinet-level officials. *See* Docket No. 1 (Sept. 5, 2018); *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

2. Plaintiffs have either effectuated or attempted service on all Defendants, though certain Defendants take the position that Plaintiffs have not yet properly served them. *See* FED. R. CIV. P. 4(i).

3. In order to facilitate timely and effective service in this action, the parties have conferred, and Defendants have agreed to designate the undersigned counsel for Defendants to

¹ Plaintiffs sue eleven named Defendants in their individual capacities: White House Chief of Staff John F. Kelly; Senior Advisor to the President Stephen Miller; former Attorney General Jefferson B. Sessions, III; Counselor to the former Attorney General Gene Hamilton; Secretary of the Department of Homeland Security Kirstjen Nielsen; Commissioner of Customs and Border Protection Kevin K. McAleenan; former Director of Immigration and Customs Enforcement (“ICE”) Thomas Homan; Acting Director of ICE Ronald D. Vitiello; Director of United States Citizen and Immigration Services L. Francis Cissna; Secretary of the Department of Health and Human Services Alex Azar; and Director of the Office of Refugee Resettlement Scott Lloyd. *See* Docket No. 1 (Sept. 5, 2018) (Compl.). The United States is not a party to this lawsuit. In filing this motion, Defendants do not waive and expressly preserve all defenses relating to all aspects of this action (including that the Court lacks personal jurisdiction over the Defendants), other than insufficient process and insufficient service of process under Fed. R. Civ. P. 12(b)(4) and (5).

accept service on behalf of Defendants who contend that they have not yet been properly served. *See* FED. R. CIV. P. 4(i)(3), (e)(2)(C). Plaintiffs will complete service on all Defendants on November 9, 2018. *Id.*

4. Under Federal Rule of Civil Procedure 12(a)(3), Defendants must respond to the Complaint within 60 days after “service on the officer or employee or service on the United States attorney, whichever is later.” FED. R. CIV. P. 12(a)(3).

5. Because Plaintiffs have served or will serve the different Defendants on different dates, the deadlines for Defendants to respond to the Complaint will vary substantially.

6. For any Defendants served on November 9, 2018, a response to the Complaint will be due 60 days later, on January 8, 2019. As indicated, Defendants expect to file a single consolidated motion to dismiss all claims in the Complaint.

7. To ensure that the case proceeds in an orderly and efficient manner, the parties wish to consolidate Defendants’ deadlines, so that all Defendants respond to the Complaint on one date. This approach will best serve the resources of both the Court and the parties.

8. Because the parties anticipate briefing that addresses numerous and complex legal issues, the Defendants seek leave to file a reply brief under Local Rule 7.1(b)(3), and the Plaintiffs consent to this request. The Plaintiffs expressly reserve the right to seek leave to file a sur-reply brief under Local Rule 7.1(b)(3) at a later time, and the Defendants agree to work cooperatively and in good faith with the Plaintiffs should the Plaintiffs seek leave to file a sur-reply brief.

9. To ensure that the eleven Defendants have adequate time to prepare a thorough motion to dismiss and reply, and to ensure that Plaintiffs have adequate time to prepare their opposition to the motion, the parties wish to set the time for filing the motion, opposition, and

reply. Specifically, Defendants seek a consolidated response date of January 8, 2019, to file their motion to dismiss. Plaintiffs seek 45 days to file their opposition brief, and Defendants seek 35 days to file their reply. *See* FED. R. CIV. P. 6, 12(a)(3); L.R. 7.1.

10. The parties have agreed upon and respectfully request that the Court enter the following briefing schedule and extend the deadlines that would otherwise apply under Rule 12 and Local Rule 7.1:

January 8, 2019	Defendants file motion to dismiss.
February 22, 2019	Plaintiffs file opposition to motion to dismiss.
March 29, 2019	Defendants file reply.

Dated: November 9, 2018

Respectfully submitted,

/s/ Joseph M. Cacace
Howard M. Cooper (BBO # 543842)
Joseph M. Cacace (BBO # 672298)
TODD & WELD LLP
One Federal Street, 27th Floor
Boston, MA 02110
(617) 720-2626
hcooper@toddweld.com
jcacace@toddweld.com

Susan B. Church (BBO # 639306)
Derege Demissie (BBO # 637544)
Heather Yountz (BBO # 669770)
Brittanie Allen (BBO # 697561)
DEMISSIE & CHURCH
929 Massachusetts Avenue, Suite 01
Cambridge, MA 02139
(617) 319-2399
sbc@demissiechurch.com
dd@demissiechurch.com

Jeff Goldman (BBO # 548056)
Jesse M. Bless (BBO # 660713)
THE LAW OFFICES OF JEFF GOLDMAN LLP

125 Washington Street, Ste. 204
Salem, MA 01970
(781) 704-3897
Jeff@jeffgoldmanimmigration.com
Jesse@jeffgoldmanimmigration.com

David A. Vicinanzo (*pro hac vice* to be requested)
Nathan P. Warecki (BBO# 687547)
Lauren Maynard (BBO# 698742)
NIXON PEABODY LLP
100 Summer Street
Boston, MA 02110
(617) 345-1000
dvicinanzo@nixonpeabody.com
nwarecki@nixonpeabody.com
lmaynard@nixonpeabody.com

Iván Espinoza-Madrigal (*pro hac vice* to be requested)
Oren N. Nimni (BBO # 691821)
Lawyers' Committee for Civil Rights and Economic Justice
61 Batterymarch Street, 5th Floor
Boston, MA 02110
(617) 988-0624
iespinoza@lawyerscom.org
onimni@lawyerscom.org

Counsel for Plaintiffs

JOSEPH H. HUNT
Assistant Attorney General
Civil Division

C. SALVATORE D'ALESSIO, JR.
Acting Director
Constitutional & Specialized Tort Litigation
Torts Branch, Civil Division

MARY HAMPTON MASON
NY Bar No. 2255198, under L.R. 83.5.3(c)
Senior Trial Counsel
Constitutional & Specialized Tort Litigation
Torts Branch, Civil Division

/s/ Paul Quast

PAUL QUAST

CO Bar No. 49154, under L.R. 83.5.3(c)

Trial Attorney

Constitutional & Specialized Tort Litigation

Torts Branch, Civil Division

Department of Justice

Box 7146 Washington, DC 20044

(202) 616-4150

paul.c.quast@usdoj.gov

Counsel for Defendants

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PERSONNEL;)

Defendants.)

[PROPOSED] ORDER GRANTING MOTION TO SET BRIEFING SCHEDULE

WHEREFORE, the parties have conferred and filed a joint motion seeking entry of a briefing schedule to govern Defendants' initial motion to dismiss all claims in the case, after considering the joint motion, the Court HEREBY GRANTS the motion and enters the following briefing schedule:

January 8, 2019	Defendants file motion to dismiss.
February 22, 2019	Plaintiffs file opposition to motion to dismiss.
March 29, 2019	Defendants file reply.

SO ORDERED, this the ____ day of _____ 2018.

Hon. Timothy S. Hillman
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **JOINT MOTION TO SET BRIEFING SCHEDULE AND CONSOLIDATE AND EXTEND DEADLINES** and **PROPOSED ORDER** was served upon the attorney of record for each other party by means of the District Clerk's CM/ECF electronic filing system on November 9, 2018.

/s/ Paul Quast
PAUL QUAST